

ILLINOIS POLLUTION CONTROL BOARD  
January 22, 2015

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	AC 12-51
	)	(IEPA No. 87-12-AC)
NORTHERN ILLINOIS SERVICE	)	(Administrative Citation)
COMPANY,	)	
	)	
Respondent.	)	

SCOTT B. SIEVERS APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY; and

PETER DEBRUYNE APPEARED ON BEHALF OF NORTHERN ILLINOIS SERVICE COMPANY.

OPINION AND ORDER OF THE BOARD (by J.A. Burke):

On November 20, 2014, the Board issued an interim opinion and order, finding that Northern Illinois Service Company (Northern) violated Sections 21(p)(1), 21(p)(7), and 55(k)(1) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), 21(p)(7), 55(k)(1) (2012)). The case concerns Northern's facility at 4781 Sandy Hollow Road, Rockford, Winnebago County.

In the November 20, 2014 decision, the Board held that under Section 42(b)(4-5) of the Act (415 ILCS 5/42(b)(4-5) (2012)), Northern was subject to a \$7,500 civil penalty. In addition, the Board held that Northern, by unsuccessfully contesting the administrative citation at hearing, also must pay the hearing costs of the Illinois Environmental Protection Agency (Agency) and the Board. The hearing in this case was held on July 24, 2014, at the State of Illinois, Rockford Regional Office in Rockford.

The Board directed the Agency and the Clerk of the Board each to file documentation of their respective hearing costs, supported by affidavit, and to serve the filing on Northern. The Board also gave Northern an opportunity to respond to the requests for hearing costs and noted that after the time periods for these filings had expired, the Board would issue a final opinion and order assessing the civil penalty and any appropriate hearing costs.

On December 3, 2014, the Clerk of the Board submitted an affidavit of the Board's hearing costs totaling \$1,134.50, the entirety of which reflects the costs of court reporting. The Clerk served this documentation on Northern. On December 15, 2014, the Board received the Agency's statement of hearing costs (Statement), supported by affidavit, which the Agency served on Northern. The Agency's hearing costs total \$994, consisting of depositions,

transcripts, and lodging for the Agency attorney at the time of hearing. Statement at 1. Northern responded to the Agency's statement of hearing costs on December 29, 2014 (Response). *See* 35 Ill. Adm. Code 108.502-108.506. The Agency filed a reply (Reply) on January 13, 2015.

Specifically, the Agency seeks costs for: depositions of Northern employees William Hoff and Paul Munson (\$195); transcripts of the Hoff and Munson depositions (\$348.90); a transcript of Agency Inspector Donna Shehane's deposition taken by Northern (\$335.30); attorney lodging for the Board hearing (\$79.80); and attorney per diem reimbursement for the Board hearing (\$35). Statement at 1.

Northern contends that the costs relating to prehearing discovery depositions are not "hearing costs" or "associated hearing costs." Response at 1. Northern further contends that the hotel and per diem expense are similarly not related to "hearing costs." *Id.* Northern argues that "costs" refer to "court costs" such as filing fees, subpoena fees, statutory witness fees, courthouse fees, and reporter fees. *Id.* at 2, citing Marriage of Tiballi, 2014 IL 116319 (2014). Northern further contends that the deposition fees are not recoverable "[b]ecause all of the witnesses referenced in Complainant's Statement of Hearing Costs testified at trial." Response at 2, citing Vicencio v. Lincoln-Way Builders, Inc., 204 Ill.2d 295, 306, 308 (2003) ("the cost of taking a discovery deposition is one of the ordinary expenses of litigation and, therefore, not recoverable by the prevailing party. . . . A deposition is necessarily used at trial only when it is relevant and material and when the deponent's testimony cannot be procured at trial as, for example, if the deponent has died, has disappeared before trial, or is otherwise unavailable to testify.").

The Agency states that Northern was the first to pursue discovery in this action and initiated discovery depositions before the Agency did. Reply at 1, 2. The Agency also notes that Mr. Munson was impeached with his deposition testimony at hearing. *Id.* at 3. The Agency contends that the hearing would "have taken longer and been less focused" without the depositions ensuring "that witnesses would not stray from their prior sworn testimony." *Id.* The Agency states its lodging and per diem expenses were for the Agency attorney to travel more than three hours from his office for a 9:00 a.m. hearing. *Id.*

The lodging and per diem expenses of the Agency's attorney to attend the hearing are recoverable costs associated with the hearing. 415 ILCS 5/42(b)(4) (2012); 35 Ill. Adm. Code 108.500(b)(3), 108.502. The Board has previously awarded an Agency attorney lodging costs as part of recoverable hearing costs. *See* IEPA v. Simons, AC 2-2, slip op. at 2 (Sept. 19, 2002). The Board has also awarded an Agency attorney per diem together with lodging costs. *See* IEPA v. Atkinson Landfill Co., AC 94-8, slip op. at 2 (April 6, 1995). The Board therefore grants the Agency's request for lodging costs of \$79.80 and per diem costs of \$35.

Illinois Supreme Court Rule 208(d) states that deposition "fees and charges . . . may, in the discretion of the trials court, be taxed as costs." Ill. S. Ct. Rule 208(d). The Agency states that the depositions for which reimbursement are sought were "referenced in the final hearing in this matter." *See* Statement Affidavit. However, these depositions were discovery depositions, and all three witnesses were available at the Board hearing. The Board finds these costs are not "costs associated with the hearing." 35 Ill. Adm. Code 108.502. The Board therefore denies the

Agency's request for reimbursement for costs associated with the depositions of Mr. Hoff, Mr. Munson, and Ms. Shehane.

The Board finds the lodging and per diem costs of the Agency and the costs of the Board reasonable and below orders Northern to pay \$114.80 in Agency hearing costs and \$1,134.50 in Board hearing costs under Section 42(b)(4-5) of the Act (415 ILCS 5/42(b)(4-5) (2012)). The Board incorporates by reference the findings of fact and conclusions of law from its November 20, 2014 interim opinion and order. Under Section 31.1(d)(2) of the Act (415 ILCS 5/31.1(d)(2) (2012)), the Board attaches the administrative citation and makes it part of the Board's final order.

This opinion constitutes the Board's findings of fact and conclusions of law.

### **ORDER**

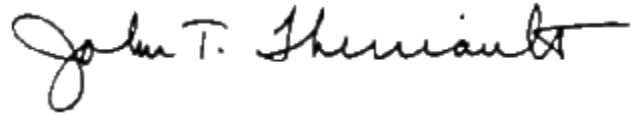
1. The Board finds that Northern violated Sections 21(p)(1), 21(p)(7), and 55(k)(1) of the Environmental Protection Act (415 ILCS 5/21(p)(1), 21(p)(7), 55(k)(1) (2012)).
2. The Board assesses the statutory civil penalty of \$7,500 for the violations, as well as hearing costs totaling \$1,249.30, for a total amount due of \$8,749.30. Northern must pay \$8,749.30 no later than March 9, 2015, which is the first business day following the 45th day after the date of this order. Northern must pay this amount by certified check or money order, made payable to the Illinois Environmental Protection Trust Fund. The case number, case name, and Northern's social security number or federal employer identification number must be included on the certified check or money order.
3. Northern must send the certified check or money order to:
 

Illinois Environmental Protection Agency  
Attn.: Fiscal Services  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276
4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2012)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2012)).
5. Payment of this penalty does not prevent future prosecution if the violations continue.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2012); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on January 22, 2015, by a vote of 4-0.



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John T. Therriault, Clerk  
Illinois Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ADMINISTRATIVE CITATION

RECEIVED  
CLERK'S OFFICE  
MAY 07 2012  
STATE OF ILLINOIS  
Pollution Control Board

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
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Complainant, )  
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v. )  
 )  
NORTHERN ILLINOIS SERVICE )  
COMPANY, )  
 )  
 )  
 )  
Respondent. )

AC 12-51  
(IEPA No. 87-12-AC)

JURISDICTION

This Administrative Citation is issued pursuant to the authority vested in the Illinois Environmental Protection Agency by Section 31.1 of the Illinois Environmental Protection Act. 415 ILCS 5/31.1 (2010).

FACTS

1. That Northern Illinois Service Company is the current owner ("Respondent") of a facility located at 4781 Sandy Hollow Road, Rockford, Winnebago County, Illinois. The property is commonly known to the Illinois Environmental Protection Agency as Rockford/Northern Illinois Service.
2. That said facility is an open dump operating without an Illinois Environmental Protection Agency Operating Permit and is designated with Site Code No. 2010301120.
3. That Respondent has owned said facility at all times pertinent hereto.
4. That on March 14, 2012, Donna Shehane of the Illinois Environmental Protection Agency's ("Illinois EPA") Rockford Regional Office inspected the above-described facility. A copy of

her inspection report setting forth the results of said inspection is attached hereto and made a part hereof.

5. That on 5-2-12, Illinois EPA sent this Administrative Citation via Certified Mail No. 7004 2510 0001 8619 2446.

#### VIOLATIONS

Based upon direct observations made by Donna Shehane during the course of her March 14, 2012 inspection of the above-named facility, the Illinois Environmental Protection Agency has determined that Respondent has violated the Illinois Environmental Protection Act (hereinafter, the "Act") as follows:

- (1) That Respondent caused or allowed the open dumping of waste in a manner resulting in litter, a violation of Section 21(p)(1) of the Act, 415 ILCS 5/21(p)(1) (2010).
- (2) That Respondent caused or allowed the open dumping of waste in a manner resulting in deposition of general construction or demolition debris: or clean construction or demolition debris, a violation of Section 21(p)(7) of the Act, 415 ILCS 5/21(p)(7) (2010).
- (3) That Respondent caused or allowed water to accumulate in used or waste tires, a violation of Section 55(k)(1) of the Act, 415 ILCS 55(k)(1) (2010).

#### CIVIL PENALTY

Pursuant to Section 42(b)(4-5) of the Act, 415 ILCS 5/42(b)(4-5) (2010), Respondent is subject to a civil penalty of One Thousand Five Hundred Dollars (\$1,500.00) for each of the violations identified above, for a total of Four Thousand Five Hundred Dollars (\$4,500.00). If Respondent elects not to petition the Illinois Pollution Control Board, the statutory civil penalty

specified above shall be due and payable no later than May 31, 2012, unless otherwise provided by order of the Illinois Pollution Control Board.

If Respondent elects to contest this Administrative Citation by petitioning the Illinois Pollution Control Board in accordance with Section 31.1 of the Act, 415 ILCS 5/31.1 (2010), and if the Illinois Pollution Control Board issues a finding of violation as alleged herein, after an adjudicatory hearing, Respondent shall be assessed the associated hearing costs incurred by the Illinois Environmental Protection Agency and the Illinois Pollution Control Board. Those hearing costs shall be assessed in addition to the One Thousand Five Hundred Dollar (\$1,500.00) statutory civil penalty for each violation.

Pursuant to Section 31.1(d)(1) of the Act, 415 ILCS 5/31.1(d)(1) (2010), if Respondent fails to petition or elects not to petition the Illinois Pollution Control Board for review of this Administrative Citation within thirty-five (35) days of the date of service, the Illinois Pollution Control Board shall adopt a final order, which shall include this Administrative Citation and findings of violation as alleged herein, and shall impose the statutory civil penalty specified above.

When payment is made, Respondent's check shall be made payable to the Illinois Environmental Protection Trust Fund and mailed to the attention of Fiscal Services, Illinois Environmental Protection Agency, 1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276. Along with payment, Respondent shall complete and return the enclosed Remittance Form to ensure proper documentation of payment.

If any civil penalty and/or hearing costs are not paid within the time prescribed by order of the Illinois Pollution Control Board, interest on said penalty and/or hearing costs shall be assessed against the Respondent from the date payment is due up to and including the date that payment is received. The Office of the Illinois Attorney General may be requested to initiate proceedings against Respondent in Circuit Court to collect said penalty and/or hearing costs, plus any interest accrued.

PROCEDURE FOR CONTESTING THIS  
ADMINISTRATIVE CITATION

Respondent has the right to contest this Administrative Citation pursuant to and in accordance with Section 31.1 of the Act, 415 ILCS 5/31/1 (2010). If Respondent elects to contest this Administrative Citation, then Respondent shall file a signed Petition for Review, including a Notice of Filing, Certificate of Service, and Notice of Appearance, with the Clerk of the Illinois Pollution Control Board, State of Illinois Center, 100 West Randolph, Suite 11-500, Chicago, Illinois 60601. A copy of said Petition for Review shall be filed with the Illinois Environmental Protection Agency's Division of Legal Counsel at 1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276. Section 31.1 of the Act provides that any Petition for Review shall be filed within thirty-five (35) days of the date of service of this Administrative Citation or the Illinois Pollution Control Board shall enter a default judgment against the Respondent.

  
\_\_\_\_\_  
John J. Kim, Interim Director  
Illinois Environmental Protection Agency

Date: 4/30/2012

Prepared by: Susan E. Konzelmann, Legal Assistant  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
(217) 782-5544



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STATE OF ILLINOIS  
Pollution Control Board

REMITTANCE FORM

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
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Complainant, )  
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v. )  
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NORTHERN ILLINOIS SERVICE )  
COMPANY, )  
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 )  
Respondent. )

AC

12-51

(IEPA No. 87-12-AC)

FACILITY: Rockford/Northern Illinois Service  
SITE CODE NO.: 2010301120  
COUNTY: Winnebago  
CIVIL PENALTY: \$4,500.00  
DATE OF INSPECTION: March 14, 2012

DATE REMITTED:

SS/FEIN NUMBER:

SIGNATURE:

NOTE

Please enter the date of your remittance, your Social Security number (SS) if an individual or Federal Employer Identification Number (FEIN) if a corporation, and sign this Remittance Form. Be sure your check is enclosed and mail, along with Remittance Form; to Illinois Environmental Protection Agency, Attn.: Fiscal Services, P.O. Box 19276, Springfield, Illinois 62794-9276.